**CHO YU-LON**

**v.**

**ARAB-MALAYSIAN FINANCE BHD**

HIGH COURT MALAYA, PENANG
RK NATHAN J
[BANKRUPTCY NO: 29-239-2001]
12 MARCH 2003

***BANKRUPTCY:*** *Petition - Opposition to petition - Notice of intention to show cause against petition - Whether judgment debtor must specify/identify statements in creditor's petition that he intends to dispute - Whether sufficient to generally dispute debt - Bankruptcy Rules 1969, r. 117*

***BANKRUPTCY:*** *Petition - Affidavit verifying petition - Procedure - Whether original petition must be annexed to the affidavit verifying it - Whether sufficient to annex a copy of the petition as an exhibit to the affidavit verifying it - Whether substantial injustice caused to judgment debtor - Bankruptcy Rules 1969, r. 106, Form 11 - Bankruptcy Act 1967, ss. 6(1), 131*

This was an appeal from the decision of the deputy registrar dismissing the judgment debtor's application to strike out the creditor's petition. The principal ground of appeal was anchored in s. 6(1) of the Bankruptcy Act 1967 ('the Act') and r. 106 of the Bankruptcy Rules 1969 ('the Rules'), *viz*, that the creditor's petition was not verified by an affidavit of truth of statements. At the hearing of the appeal, the judgment creditor raised the preliminary objection that the judgment debtor had failed to comply with the requirement of r. 117 of the Rules on notice of intention to show cause against petition.

**Held:**

**[1]** The judgment debtor did not specify or identify the statements in the creditor's petition that he intended to deny or dispute. The notice filed by the judgment debtor merely showed that he generally intended to dispute the debt. This clearly fell short of the requirement in r. 117 of the Rules. The preliminary objection raised by the judgment creditor was, therefore, well-founded. (p 189 b-d)

**[2]** The correct and only satisfactory way to verify a creditor's petition is to annex a copy of the said petition to the affidavit verifying it. In the present case, the judgment creditor had annexed a copy of the petition **as an exhibit** to the affidavit verifying it. This was sufficient to comply with r. 106 and Form 11 of the Rules, although the original petition was not attached to the verifying affidavit. In any case, no substantial injustice was caused to the judgment debtor and s. 131 of the Act would validate any formal defect or irregularity. (pp 189 e-h & 190 a)

*[Judgment debtor's appeal dismissed.]*

**Case(s) referred to:**

*Ooi Thean Chuan v. Banque Nationale de Paris [1992] 2 CLJ 1225; [1992] 3 CLJ (Rep) 160 HC* ***(refd)***

*Re Yap Kin ex p United Malayan Banking Corp Bhd [1997] 3 CLJ Supp 56 HC* ***(foll)***

**Legislation referred to:**

Bankruptcy Act 1967, s. 6(1)
Bankruptcy Rules 1969, rr. 106, 117

*For the judgment debtor - KH Ng; M/s SH Ang & Co*
*For the judgment creditor - Rusmin Alwani Shukery; M/s Shahrizat & Tan*

*[The judgment debtor has filed an appeal to the Court of Appeal vide Civil Appeal No: P-03-12-03]*

*Reported by Gan Peng Chiang*

## JUDGMENT

**RK Nathan J:**

**Findings Of The Court**

The judgment debtor's application (encl. 8) to strike out the creditor's petition was dismissed by the learned deputy registrar. This is the appeal against that decision.

In his supporting affidavit the judgment debtor contended that the creditor's petition dated 31 May 2001 was defective and raised various grounds. However, before me counsel for the judgment debtor relied only on the following issues:

Breach of s. 6(1) of the Bankruptcy Act 1967.

The said section reads as follows:

> A creditor's petition shall be verified by affidavit of the creditor or of some person on his behalf having knowledge of the facts, and shall be served as prescribed.

The judgment debtor pointed out that the creditor's petition filed did not have the affidavit of truth of the statement contained in the said petition and was therefore in non-compliance with r. 106 of the Bankruptcy Rules 1969 which reads as follows:

**Verification.**

1. A creditor's petition shall be verified by affidavit.

2. A petitioning creditor who cannot himself verify all the statements contained in his petition shall file an affidavit made by some person who can depose to them.

The applicant also argued that there was non-compliance with Form 11 of the Bankruptcy Rules. The Form as it should be is reproduced herewith.

No. 11

(Rule 106)

(Title)

AFFIDAVIT OF TRUTH OF STATEMENTS IN PETITION

I, the petitioner named in the petition hereunto annexed, affirm (if the petitioner declare or affirm, alter the form accordingly) and say:

1. That the several statements in the said petition are within my own knowledge true.

Affirm at, etc ...

NOTE – If the petitioner cannot depose that the truth of all the several statements in the petition is within his own knowledge, he must set forth the statements the truth of which he can depose to, and file a further affidavit by some person or persons who can depose to the truth of the remaining statements.

**Preliminary Objection**

Counsel for the judgment creditor however raised a preliminary objection to the appeal in respect of the notice that the judgment debtor was required to file, pursuant to r. 117 of the Bankruptcy Rules. The said rule reads as follows:

**Debtor intending to show cause.**

Where a debtor intends to show cause against a petition he shall file a notice with the Registrar specifying the statements in the petition which he intends to deny or dispute and transmit by post or otherwise to the petitioning creditor and his solicitor if known a copy of the notice three days before the day on which the petition is to be heard.

Cik Rusmin for the judgment creditor pointed out that what the said notice filed by the judgment debtor showed was that the judgment debtor intended to dispute the debt. All that the judgment debtor has said is that he intends to oppose the prayers sought in the creditor's petition and that he therefore is disputing the debt. However pursuant to r. 117 the judgment debtor must specify the statement in the petition which he intends to deny or dispute. The detailed particulars as contained in the creditor's petition contains 20 different items with their respective calculations.

There are also set out 16 instances when payments were credited. The judgment debtor has indeed failed to identify the items he intended to dispute. This to my mind is clearly a breach of r. 117. On this preliminary issue itself I find for the judgment creditor.

**Verification Of Creditor's Petition**

It is the case of the judgment debtor that since the creditor's petition did not have annexed to it, the affidavit verifying the petition, there has been non-compliance with r. 106. In fact I am of the view that the judgment debtor has got it the wrong way round.

In *Re Yap Kin ex p United Malayan Banking Corp Bhd* [1997] 3 CLJ Supp 56 I held, *obiter*, that the correct and only satisfactory way to verify a creditor's petition is to annex a copy of it to the affidavit verifying it. In *Ooi Thean Chuan v. Banque Nationale de Paris* [1992] 2 CLJ 1225; [1992] 3 CLJ (Rep) 160, Edgar Joseph Jr J (as his Lordship then was) held that the verifying affidavit prescribed by r. 106 is based on Form 11 which requires the petition to be annexed to it. His Lordship further held that the petition must be tied to, or bound to, or attached to, or joined to, or affixed to, or stapled to the verifying affidavit so as to avoid any dispute as to what exactly is being verified.

In the case before me what the petitioner did was to annex a copy of the petition as an exhibit to the affidavit verifying the petition. The exhibit was clearly stapled to the affidavit with the marking sheet bearing exh. A on

the certificate attached to the exhibit. I am of the view that there has been proper compliance with r. 106 and Form 11, although the original creditor's petition was not attached to the affidavit verifying the petition.

Bearing in mind the provision of s. 131 of the Bankruptcy Act 1967 which states that:

No proceeding in bankruptcy shall be invalidated by any formal defect or by any irregularity, unless the court before which an objection is made to the proceeding is of opinion that substantial injustice has been caused by the defect or irregularity and that the injustice cannot be remedied by any order of that court," I find that no substantial injustice had been done to the judgment debtor by attaching a copy of the creditor's petition as an exhibit to the affidavit verifying the petition.

In the circumstances I dismissed the appeal with costs.